

10 GOOGLE LLC,

11 Plaintiff,

No. C 20-06754 WHA

12 v.

13 SONOS, INC.,

14 Defendant.

**ORDER RE MOTION FOR
RECONSIDERATION**

16 During our patent showdown procedure, Sonos moved for summary judgment of
17 infringement of claim 1 of U.S. Patent No. 10,848,885. In opposition, Google argued that
18 claim 1 of the '885 patent was invalid. Specifically, Google argued the claim covered
19 unpatentable subject matter and the patent lacked written description support.

20 The July 2022 order on summary judgment rejected both of Google's invalidity
21 arguments (Dkt. No. 309). Google was then ordered to show cause as to why summary
22 judgment should not be entered in favor of Sonos on the issue of validity. Google responded
23 by raising new invalidity theories based on anticipation and obviousness. A subsequent
24 October 2022 order entered summary judgment in favor of Sonos, ruling that Google had
25 waived its back-up invalidity theories by not raising them in its opposition (Dkt. No. 382).

26 Google now moves for reconsideration of the October 2022 order. Relying on *Mikkelsen*
27 *Graphic Engineering, Inc. v. Zund America, Inc.*, 541 F. App'x 964 (Fed. Cir. 2013), Google

1 asserts that it was under no obligation to raise all of its invalidity theories at summary
2 judgment because Sonos never moved for summary judgment of no invalidity.

3 Upon review, this order agrees that *Mikkelsen* is on point and that it cautions against
4 entering summary judgment against non-movants in like circumstances. *See id.* at 972.
5 Therefore, Google's motion is **GRANTED**. The Court's prior ruling of summary judgment in
6 favor of Sonos as to the validity of claim 1 of the '885 patent is hereby withdrawn (Dkt. No.
7 382). The Court's other findings as to that claim on summary judgment are not changed by
8 this order (Dkt. No. 309).

9 Both parties may submit a memo of up to five pages by **MONDAY, MARCH 6, at 12:00**
10 **P.M.**, stating their views on how to proceed on the issues in the pending summary judgment
11 motions given this tardy ruling.

12 **IT IS SO ORDERED.**

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14 Dated: March 2, 2023.



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17 WILLIAM ALSUP
18 UNITED STATES DISTRICT JUDGE
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